



## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 24, 2023

FROM: DIRECTOR GINO BETTS JR.  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0183

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Sustained
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained - Lawful and Proper
Imposed Discipline		
Oral Reprimand		

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 (NE#1) conducted an inadequate preliminary investigation and used unreasonable discretion when he responded to a traffic collision.

### **ADMINISTRATIVE NOTE:**

On September 8, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

### **SUMMARY OF INVESTIGATION:**

The Complainant filed an OPA complaint on April 27, 2023, describing his involvement in an April 2, 2023, traffic collision. The Complainant wrote he was on a bicycle stopped at a red light. He stated that the light turned green, so he entered the intersection and was struck by Community Member #1's (CM#1) truck, which turned left without yielding to the Complainant. The Complainant wrote that his bicycle was crushed. The Complainant wrote that CM#1 stopped and asked whether he was injured. Community Member #2 (CM#2)—an onlooker—called 9-1-1.

The Complainant wrote CM#1 was "acting very intoxicated," so he asked CM#1 whether he had been drinking. The Complainant wrote that CM#1 confirmed he drank at "the Mariners game with friends." The Complainant wrote that NE#1 and paramedics arrived. The Complainant alleged NE#1 spoke with CM#1 then, "without getting the driver's insurance information or performing a field sobriety test, and without getting a statement on the incident from me," allowed CM#1 to leave. The Complainant wrote that, after CM#1 left, he told NE#1 that CM#1 had slurred speech and admitted being intoxicated. The Complainant wrote that NE#1 asked why he had not mentioned it earlier. The Complainant said he had no opportunity and assumed NE#1 would speak to him before allowing CM#1 to leave. The



Complainant said his “greatest concern” was that NE#1 failed to gather CM#1’s insurance information, which created challenges concerning his ability to cover medical expenses and property damage.

After reviewing the Complaint, OPA opened an investigation. During the investigation, OPA reviewed the complaint, computer-aided dispatch (CAD) call report, incident report, Police Traffic Collision Report (PTCR), body-worn video (BWV), and SPD Training Directive TD18-00001 (DUI Detection & Investigation). OPA also interviewed the Complainant and NE#1.

**a. CAD Call Report**

According to the CAD call report, a witness called 9-1-1 on April 2, 2023, at 9:10 PM to report a bicycle and truck collision. Around 9:12 PM, the call updated that the witness smelled cannabis or alcohol on the truck’s driver.

**b. Incident Report and PTCR**

NE#1 completed an incident report and PTCR. Both noted:

*Unit 1 was travelling SB on N 85 St and had a green light to turn left onto N 85 St. Unit 2 was traveling, via bicycle, NB on Fremont Av N and had entered the intersection under a green light. The driver of Unit 1 failed to yield the right of way to Unit 2 resulting in him striking the bicyclist. Unit 1 stopped and pulled off to the side of the road. Unit 2 was able to get up and get to the side of the road. Unit 2’s [injuries] consisted of a small laceration to his left hand and complaints of knee pain. SFD evaluated him with him denying to go to the hospital. Unit 1 was issued a citation for SMC 11.55.010 Fail to yield R/W at [the] intersection.*

The PTCR had sections concerning the parties’ liability insurance. NE#1 left the box confirming CM#1 had liability insurance unchecked. NE#1 listed “UNKNONW” (sic) for CM#1’s insurance company and policy number.

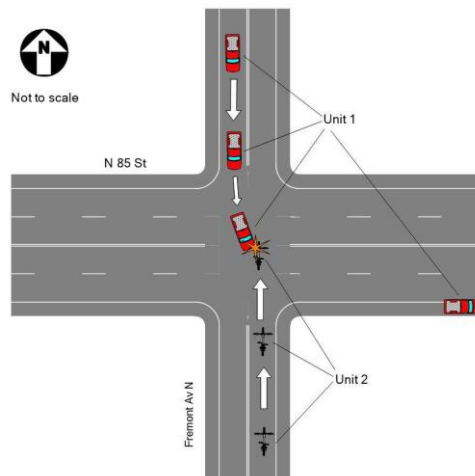
13	2	VEH. YEAR	1990	MAKE	CHEV	MODEL	GMT-400
14	2	REGISTERED OWNER INFO OWNED BY DRIVER					
15	2	LIABILITY INSURANCE IN EFFECT <input type="checkbox"/>		INSURANCE CO & POLICY # UNKNONW			
		VEHICLE LEGALLY STANDING YES <input type="checkbox"/> NO <input type="checkbox"/>		CITATION #			

*Copy of Relevant Section of PTCR*

The PTCR also diagramed the collision.



*CM#1 is indicated as "Unit 1" and the Complainant as "Unit 2."*



**c. BWV**

OPA reviewed NE#1's and Witness Officer #1's (WO#1) BWV. In summary, BWV showed:

NE#1 arrived and contacted the Complainant, CM#1, and CM#2 at a bus shelter. The Complainant sat on a bus shelter bench. CM#1 was near the edge of the shelter. It was dark and rainy.

The Complainant told NE#1 his left knee and hand, which was bleeding, were injured. NE#1 confirmed that SFD was en route to provide treatment. The Complainant identified CM#1 as the truck's driver. NE#1 documented CM#1's driver's license information and instructed WO#1, who had just arrived, to take the Complainant's information. NE#1 appeared to pause from writing down CM#1's driver's license information as the Complainant spoke with SFD members and WO#1. NE#1 shined a flashlight on the Complainant as the Complainant described his injuries. NE#1 leaned within three feet of CM#1<sup>1</sup> while gathering CM#1's account of the collision. CM#1 admitted to turning and hitting the Complainant. CM#1 said he and the Complainant had green lights.

NE#1 then spoke with CM#2, who reported that the Complainant and CM#1 argued after the collision. NE#1 walked to CM#1's truck and shined a flashlight through the front passenger window. While NE#1 looked inside CM#1's truck, CM#2 approached and told NE#1 that he smelled pot and "occasional whiffs" of alcohol. NE#1 asked CM#2 whether those smells came from CM#1, but CM#2 was unsure. NE#1 told CM#2, "I didn't get any signs of impairment when I was talking..., but I really appreciate you telling me and letting me know."

NE#1 returned to the Complainant and CM#1. NE#1 obtained the Complainant's driver's license and phone numbers. NE#1 then asked to speak with CM#1 separately. After NE#1 and CM#1 stepped away, NE#1 told CM#1 that he would

<sup>1</sup> OPA estimated this distance from BWV. NE#1 also told OPA he was about three feet away.



be cited for failure to yield during a left-hand turn and the ticket would be mailed to him. NE#1 gave CM#1 a business card and allowed CM#1 to leave.

After CM#1 left, WO#1 asked NE#1, "Sober?" NE#1 said he did not detect alcohol on CM#1 and that his "eyes look Okay." NE#1 screened the situation with his sergeant. During the call, NE#1 stated he detected no signs of impairment from the driver.

NE#1 picked up the Complainant's bicycle and brought it to the Complainant. The Complainant said, "That guy who hit me told me he was drinking." NE#1 responded, "He told you he was drinking? ... Because when I was talking to him, I got no clues of any impairment off him. I looked at his eyes. He didn't look glossy or bloodshot or anything like that. I couldn't smell anything on his breath. There was nothing in his car." The Complainant replied, "He straight up told me." NE#1 asked, "He said how much he was drinking?" The Complainant responded, "He said he was at the Seahawks game, and he drank." NE#1 replied that there was no Seahawks game that day. The Complainant responded, "Dude was impaired." NE#1 said, "Well, that wouldn't been something that I would've wanted to know when we first started." The Complainant responded, "Yeah, I know. I was a little conflicted [about] whether I was gonna change this guy's life or not. So, I apologize."

**d. SPD Training Directive**

OPA reviewed SPD Training Directive TD18-00001 "DUI Detection & Investigation." The directive noted officers could conduct a "sensory pat-down" of a driver by using sight, sound, and smell "to gather evidence of drug or alcohol influence." The directive provided examples of indicators of drug or alcohol influence.

Sight	Sound	Smell
Watery Eyes	Slurred Speech	Odor of Suspected Alcoholic Beverage
Bloodshot Eyes	Admission to Drinking	Odor of Marijuana
Soiled Clothing	Inconsistent Responses	Odor of Burnt Glass
Fumbling for Paperwork	Abusive Language	Cover Up/Masking Odors (Gum, Cologne, Cigarettes, etc.)
Observed Physical Evidence	Unusual Statements	

*Indicators of drug or alcohol use provided by TD18-00001*

**e. NE#1's Prior DUI Arrests**

OPA reviewed four DUI arrests by NE#1 from July 2022 through March 2023.

On July 23, 2022, NE#1 reported, among other things, detecting the odor of alcohol on the driver's breath and observing the driver slurring his words.

On July 24, 2022, NE#1 reported observing the driver, among other things, slurring his words.



On February 21, 2023, NE#1 arrested a driver for DUI in which he reported, among other things, administering standard field sobriety tests after smelling alcohol on the driver's breath.

On March 26, 2023, NE#1 reported, among other things, smelling the odor of alcohol from the driver and observing the driver grab an unopened beer can from the front passenger seat.

***f. OPA Interview – Complainant***

OPA conducted an audio-recorded interview with the Complainant on May 16, 2023. The Complainant's recitation of events was consistent with his OPA complaint. The Complainant reiterated that CM#1 admitted he was drinking, and his speech indicated intoxication. The Complainant said he had no opportunity to tell NE#1 that CM#1 was intoxicated since he was uncomfortable saying it in CM#1's presence. The Complainant said he planned to speak with NE#1 separately, like NE#1 did with CM#1. The Complainant also noted difficulty with his insurance claim because NE#1 did not collect CM#1's insurance information. The Complainant said that an employee at his insurance company told him it was irregular for a police officer not to collect that information during a collision investigation.

***g. OPA Interview – NE#1***

OPA interviewed NE#1 on August 16, 2023. NE#1 stated he had been a police officer with SPD for about two-and-a-half years.

NE#1 noted he had no advanced DUI training but assessed himself as "pretty good" at handling DUI investigations. NE#1 estimated he had three or four DUI arrests as the primary officer.

NE#1 described his investigation of the incident, noting he arrived at the scene, contacted the parties, interviewed a witness (CM#2), interviewed the driver (CM#1), cited CM#1, and spoke with the Complainant. NE#1 stated he did not observe anything abnormal about CM#1 during his interactions with him. NE#1 recalled CM#2 mentioning the smell of alcohol and marijuana in the air but stated CM#2 did not attribute it to CM#1. NE#1 stated that the Complainant only told him CM#1 admitted to drinking alcohol after CM#1 was released from the scene. NE#1 stated he did not recall a CAD or radio update suggesting it was a potential DUI before arriving on the call. However, NE#1 stated that he examined the interior of CM#1's truck and saw no open containers or drug paraphernalia. NE#1 also denied observing any indicators of intoxication on CM#1. NE#1 said he observed CM#1 within three feet and detected nothing noteworthy.

Concerning the thoroughness of his investigation, NE#1 admitted that he did not obtain CM#1's insurance information. NE#1 said he forgot to do it but typically requests it. NE#1 reviewed the list of impairment indicators from TD18-00001 and stated he observed none of the indicators on CM#1. NE#1 said he would have conducted a field sobriety test if he had more substantial information that CM#1 was impaired, but NE#1 did not assess CM#2's



statements as rising to that level. OPA played selections of BWV for NE#1 and asked if he believed CM#1 was slurring his words. NE#1 thought CM#1's speech pattern was normal.

Concerning whether he exercised unreasonable discretion during his investigation, NE#1 stated he used discretion properly as he did not observe signs of impairment on CM#1. NE#1 stated his error in failing to collect the insurance information was not an act of discretion but a mistake on his part.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

##### ***15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged NE#1 failed to conduct a thorough and complete search for evidence.

Officers must conduct a thorough and complete search for evidence during primary investigations. SPD Policy 15.180-POL-1. Further, only evidence impractical to collect shall be retained by the owner. *Id.* Such evidence should be photographed. *Id.*

Overall, NE#1 conducted a search for most of the relevant evidence. NE#1 met with the Complainant and CM#1 and heard their accounts about the collision. NE#1 gathered proof of identification from both, evaluated CM#1 for impairment, and inspected the interior of CM#1's truck for evidence of alcohol or drug use. NE#1 also spoke with CM#2 about his observations. When CM#2 said he smelled marijuana and alcohol, NE#1 probed for details. However, CM#2 could not attribute either smell to CM#1.

Nevertheless, NE#1's investigation fell short in two respects: First, NE#1 failed to request CM#1's insurance information. NE#1 determined CM#1 was at fault for a collision that caused physical injury and property damage. Under the circumstances, the practical and evidentiary importance of requesting the at-fault driver's insurance information was obvious. Moreover, this insurance information is a listed section in the standard PTCR, and NE#1 had a lawful basis to request it. See RCW 46.30.020(c) (failure to produce proof of financial responsibility to requesting law enforcement officer creates a presumption that person does not have insurance). His failure to request this evidence in the first place made it impossible for NE#1 to write a "complete [and] thorough" PTCR, see SPD Policy 15.180-POL-5, and has created practical difficulties for the Complainant.

Second, NE#1 should have spoken with the Complainant privately before releasing CM#1. The Complainant's reticence to provide incriminating information about CM#1 in CM#1's presence is understandable. NE#1 should have provided the Complainant with the opportunity to speak privately.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

The Complainant alleged that NE#1 used unreasonable discretion by allowing CM#1 to leave before gathering critical information.

“Employees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” SPD Policy 5.001-POL-6. “Discretion is proportional to the severity of the crime or public safety issue being addressed.” *Id.*

Here, NE#1 exercised discretion in not administering a standard field sobriety test (SFST) to CM#1. NE#1 told OPA that he would have administered an SFST if there was an indication that CM#1 was drinking. NE#1 said the only indication came from CM#2, who was uncertain. OPA agrees the information from CM#2 was extremely speculative, especially as NE#1 could not corroborate it when speaking with CM#1. OPA also identified three times on BWV where it appeared possible CM#1 slurred words while speaking with NE#1. However, OPA’s independent observations from BWV were inconclusive on this point, and NE#1 stated CM#1 spoke with a normal speech pattern. Additionally, the Complainant did not tell NE#1 that CM#1 admitted drinking alcohol until after CM#1 left the scene. Therefore, NE#1 could not consider that in his assessment.

Based on the information available to NE#1, OPA finds his decision not to administer an SFST reasonable. Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**